April 11, 2007

The Honorable John P. Kibbie
President of the Senate
State Capitol
L O C A L

Dear President Kibbie:

“Our liberties we prize and our rights we will maintain.” This concise summary of our most basic and traditional values, set forth in our state’s motto, is inscribed on the Great Seal of the State of Iowa, pursuant to The Act of the First General Assembly of the State of Iowa, approved February 25, 1847. The motto is also inscribed on our state flag, a banner that greets legislators, visitors and our citizens every day as they enter into and exit from our Capitol.

Because I am convinced that Senate File 139, an Act related to a criminal defendant filing an application for postconviction relief, is contrary to these values, I hereby disapprove and transmit to you that bill, without my signature, in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

I have not taken this step—the first veto of my first term as Governor of this great state—lightly. I do so respectfully and with the full knowledge that this law was proposed by our distinguished Attorney General, supported by the County Attorneys Association and received the unanimous vote of every House and Senate member present. However, I am firmly of the conviction that this Act, if allowed to become a part of the laws of our state, would erode some of those fundamental liberties that we prize and the rights that all of us, as public servants, have pledged to maintain.

Further, this Administration is appreciative of the public service rendered by the Attorney General, Assistant Attorneys General and the County Attorneys of Iowa, all of whom assume the difficult task of prosecuting crimes in this state using limited resources. I understand that the goal of Senate File 139 was to reduce frivolous lawsuits and thereby minimize the wasting of judicial resources, a goal that this Administration shares.

However, as public servants, we must be careful when seeking to obtain these particular aims that we do not inadvertently diminish citizens’ rights. I am convinced that if codified, Senate File 139 would erode and diminish one of our most cherished legal rights: the right to challenge the legal basis for incarcerating citizens. Senate File 139 removes from Iowa Code chapter 822 the ability of a person convicted of a simple misdemeanor to later challenge that conviction using postconviction relief remedies historically allowed to all persons convicted for any criminal offense.

In addition, history teaches us it is not a good practice to tamper with our constitutional and legal rights. The constitutions of the United States and Iowa guarantee that the *writ of habeas corpus* will not be suspended, except in cases of rebellion or invasion.

Sometimes known as “the Great Writ,” this common law precept allows a detained person to be brought before a court at a stated time and place to decide the legality of his or her detention or imprisonment.

More than thirty years ago, in 1970, Iowa lawmakers codified the common law *writ of habeas corpus* under the Uniform Postconviction Procedure Act by establishing a separate postconviction relief procedure for individuals who have been convicted of or sentenced for *any* public offense. That Act, currently found at Iowa Code chapter 822, has permitted “[a]ny person who has been convicted of, or sentenced for, a public offense” to seek postconviction relief since its enactment. Under chapter 822, the state’s power to incarcerate a citizen can be stopped if the conviction or sentence was for any reason unlawful or unconstitutional or if newly discovered evidence requires the vacation of the conviction or sentence in the interest of justice.

Senate File 139, if enacted, would eliminate the availability of postconviction relief for all simple misdemeanor convictions. Although the lowest level offense in our criminal code, a simple misdemeanor prosecution brings with it the potential for injustice and unforeseen collateral consequences—the very situation that postconviction relief procedures have been created to remedy.

The need to assure fair and just criminal prosecution outcomes on even the most minor offenses is no less important now than it was in 1970, when the General Assembly enacted chapter 822. Many citizens, particularly young adults, plead guilty to simple misdemeanor offenses without consulting an attorney or having a firm grounding in legal process. Sometimes those persons learn of adverse collateral consequences later, when they are denied the opportunity to obtain a professional license or other employment due to the uncounseled guilty plea. Such scenarios are likely to occur more frequently, not less often, in a future characterized by electronic criminal records databases that are accessible to potential employers at little cost. These employers may be deterred from hiring an otherwise qualified candidate when confronted by wrongful simple misdemeanor convictions that cannot be corrected under our postconviction relief statute. A simple misdemeanor also can result in deportation, or a permanent ban on a citizen’s ability to possess firearms. Given that such drastic consequences can follow from a simple misdemeanor conviction, those who govern must be certain that convictions that may have been imposed in error are allowed formal legal challenge.

For example, a citizen charged with a simple misdemeanor offense may have the unfortunate experience of being represented by incompetent legal counsel, resulting in an unjust conviction. In 2004, the General Assembly recognized that direct appeals were not a good place to raise complaints of ineffective assistance of counsel. For that reason, Iowa Code section 814.7 now permits a party to raise a claim of ineffective assistance of counsel during postconviction relief proceedings without having raised the matter first on direct appeal. Senate File 139 would deny this important right to those wrongfully convicted of simple misdemeanors.

Even if represented by competent legal counsel, there may be instances in which a magistrate judge—the venue where most simple misdemeanor cases are tried—commits legal error. Indeed, in our state formal legal training is not required for a person to preside in magistrate court.

The Culver-Judge Administration is committed to the prosecution and punishment of those who convict crimes. Similarly, the frivolous use of our judicial system will not be tolerated. Just as important, however, is the commitment to assure that people have recourse to all traditional procedures and remedies when, for whatever reason, they have been wrongfully convicted and sentenced.

Because Senate File 139 diminishes the liberties and rights that we, as office holders, both prize and feel duty-bound to maintain, I hereby respectfully disapprove Senate File 139.

Sincerely,

Chester J. Culver
Governor

cc: Secretary of State
Chief Clerk of the House

CJC:jcl